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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 GREG SIFFERMAN,

11 Plaintiff,

12 v.

13 STERLING FINANCIAL
14 CORPORATION, STERLING SAVINGS
BANK, and GOLF SAVINGS BANK,

15 Defendants.

CASE NO. C13-183 MJP

ORDER ON MOTION TO STRIKE

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17 THIS MATTER comes before the Court on Plaintiff's Motion to Strike Defendants'
18 Insufficient Eighth Affirmative Defense. (Dkt. No. 68-1.) Having reviewed the motion,
19 Defendants' Response (Dkt. No. 69), Plaintiff's Reply (Dkt. No. 70), and all related papers, the
20 Court hereby GRANTS in part and DENIES in part the motion to strike.

21
22 **Background**

23 Plaintiff Greg Sifferman worked as a mortgage loan officer for Defendant Sterling
24 Financial (previously Golf Savings Bank) and in this action he alleges that Defendant(s)

1 misclassified him as exempt from the overtime requirements of the Fair Labor Standards Act.
2 See 29 U.S.C. §§ 201, et seq. (Dkt. No. 1 at 3.) Plaintiff moved to have the case certified as a
3 collective action under the FLSA. (Dkt. No. 5.) On December 3, 2013, following a stay during
4 the pendency of a related case in the District of Oregon, this Court denied the motion. (Dkt. No.
5 71.) In the meantime, Defendants submitted an Answer to the Complaint, including the following
6 Eighth Affirmative Defense: “Plaintiff’s claims are barred, in whole or in part, under the
7 doctrines of waiver and estoppel.” (Dkt. No. 53 at 14..)

8 Pursuant to the collective action motion, the parties have disputed whether Defendant
9 told Plaintiff not to report overtime or that any overtime requested would be deducted from
10 commission payments owed to Plaintiff—facts that go toward Defendants’ knowledge of or
11 consent to Plaintiff’s overtime work. (See, e.g., Sifferman Decl., Dkt. No. 63-1 at 4; Kybach
12 Decl., Dkt. No. 58 at 2.) The parties continue to offer factual assertions on this topic. (Dkt. No.
13 66-3 at 2; Dkt. No. 68-1 at 3.)

14 Plaintiff now asks the Court to strike Defendants’ Eighth Affirmative Defense on the
15 basis that it is legally insufficient. (Dkt. No. 68-1 at 6.)
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17 Discussion

18 I. Rule 12(f) Standard

19 Rule 12(f) grants the Court discretion to “strike from a pleading an insufficient defense or
20 any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “The
21 function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise
22 from litigating spurious issues by dispensing with those issues prior to trial. . . .” Whittlestone,
23 Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010) (quoting Fantasy, Inc. v. Fogerty, 984
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1 F.2d 1524, 1527 (9th Cir. 1993)). The moving party bears the burden of showing that a
2 challenged defense is insufficient. See LaFleur v. Sunbeam Prods., Inc., Case No. C09-425 MJP,
3 Dkt. No. 36 at 4 (W.D. Wash. 2010). Motions to strike are disfavored and should not be granted
4 unless “it is clear that the matter to be stricken could have no possible bearing on the subject
5 matter of the litigation.” In re New Century, 588 F. Supp. 2d 1206, 1220 (C.D. Cal. 2008).
6 Courts will not grant motions to strike unless “there are no questions of fact, . . . any questions of
7 law are clear and not in dispute, and . . . under no set of circumstances could the claim or defense
8 succeed.” RDF Media Ltd. v. Fox Broad. Co., 372 F. Supp. 2d 556, 561 (C.D. Cal. 2005).

9 II. Legal Sufficiency of the Waiver Doctrine in FLSA Cases

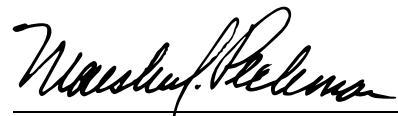
10 Plaintiff claims the affirmative defense of waiver is legally insufficient because an
11 employee cannot waive the right to overtime under the FLSA. (Dkt. No. 68-1 at 6–7.) Supreme
12 Court decisions “have frequently emphasized the nonwaivable nature of an individual
13 employee’s right to a minimum wage and to overtime pay under the [FLSA].” Barrentine v.
14 Arkansas-Best Freight System, Inc., 450 U.S. 728, 740 (1981). It is clear that “FLSA rights
15 cannot be abridged by contract or otherwise waived because this would ‘nullify the purposes’ of
16 the statute and thwart the legislative policies it was designed to effectuate.” Id. (citations
17 omitted).

18 Defendants characterize their defense as the same as the “Avoidable Consequences
19 Defense” allowed in Khadera v. ABM Indus. Inc., C08-417 RSM, 2012 WL 581401, *3 (W.D.
20 Wash. Feb. 21, 2012). But Khadera also noted that a defense of waiver is unavailable under the
21 FLSA. Id.

22 Plaintiff is correct that waiver is not a defense to overtime claims under the FLSA. The
23 waiver defense is therefore STRICKEN from Defendants’ Eighth Affirmative Defense.

1 The clerk is ordered to provide copies of this order to all counsel.

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3 Dated this 2nd day of January, 2014.

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6 Marsha J. Pechman
7 Chief United States District Judge
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